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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/813,537

03/29/2004

Alberto J. Martinez

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07/27/2007

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EXAMINER

VO, THANH DUC

ART UNIT

PAPER NUMBER

2189

MAIL DATE

DELIVERY MODE

07/27/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/813,537

Applicant(s)

MARTINEZ, ALBERTO J.

Examiner

Thanh D. Vo

Art Unit

2189

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 May 2007.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-20 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. This Office Action is responsive to the RCE filed on May 21, 2007. Claims 1, 5, 8, 11, and 14 have been amended. Claims 17-20 have been added. Claims 1-20 are presented for examination. Claims 1-20 are pending. All objections or rejections not repeated below are withdrawn.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 14-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

On page 11, paragraph 0028 of the **previous** specification filed on March 29, 2004 has provided evidence that applicant intends the medium to include a signal (i.e. radio frequency link) as such the claim is drawn to a form of energy. Energy is not one of four categories of invention and therefore this claim is not statutory. Energy is not a series of steps or acts and thus is not a process. Energy is not a physical article or object and as such is not a machine or manufacture. Energy is not combination of substances and therefore not a composition of matter.

All dependent claims are rejected as having the same deficiencies as the claims they depend from.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

As per claims 1, 5, and 8, the specification fails to disclose the method of “preventing a read of the pointer from the known location by any operating system supported processor, **permanently**” or “prevent a read of the pointer by any operating system supported process, permanently, when the pointer is in a protected mode”.

It's further noted that on page 4, paragraph 0014, the specification discloses that any application that accesses data that is designated to be protected may be supported. Therefore, the limitation above contradicts with the disclosure of the present invention because the disclosure actually discloses that the data can be access if the application has the right to access even it is in a protected mode.

As per claims 11 and 14, the specification fails to disclose the method of “receiving a request from any operating system supported process, **permanently**, for a location of data”.

It is known in the computer art that a computer system or an electronic device can approach a lost of data due to physical damage or system failure. Because such catastrophe can occur, the specification needs to particularly disclose how the current invention can support a **permanent** access to the data in order to provide the evidence that at the time of the application was file, the inventor(s) have had possession of the claimed invention.

In addition, the specification fails to disclose how the request can be permanently received, wherein permanently received means that the request is eternally received from any operating system.

All dependent claims are rejected as having the same deficiencies as the claims they depend from.

Appropriate correction is required.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

In respond to the remarks corresponding to 35 U.S.C 101 on page 8, claims 14-16 stand rejected under 35 U.S.C 101 because the Applicant was once including the "radio frequency link" in the examples for the machine readable medium. In order to overcome this rejection, the Applicant has to explicitly disavow such embodiment by stating it in the remarks.

In accordance to the Guidelines for the Examination of Patent Applications Under the 35 U.S.C 112, paragraph 1, "Written Description" Requirement (MPEP 2163 [R-5]) the Examiner has done a thorough review of the prior art and examination on the merits for compliance with 35 U.S.C 102 and 103 statutory requirements and no prior art is currently found for the subject matter newly added into claims 1, 5, 8, and 14.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh D. Vo whose telephone number is (571) 272-0708. The examiner can normally be reached on M-F 9AM-5:30PM.

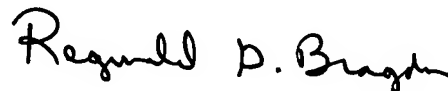
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Reginald G. Bragdon can be reached on (571) 272-4204. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2189

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Thanh D. Vo  
Patent Examiner  
AU 2189  
7/18/2007



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